

Greater North Dakota Chamber
HB 1420
House Human Services Committee
February 3, 2021

Mr. Chairman and members of the House Human Services Committee, my name is Arik Spencer, President and CEO of the Greater North Dakota Chamber (GNDC). GNDC is North Dakota's largest statewide business advocacy organization. We are also affiliated with the US Chamber of Commerce and the National Association of Manufacturers and are opposed to House Bill 1420.

North Dakota business leaders consistently cited as workforce a top concern and need. And it's because of these concerns about our workforce that GNDC has taken a position against the legalization of recreational marijuana.

Industries ranging from health care to transportation to energy, which have strict drug and alcohol policies for both employee and public safety, have had increasing challenges finding employees in states that have legalized recreational marijuana, such as Colorado and Oregon.

Failed employer drug tests have nearly doubled in both Colorado and Oregon since legalization. North Dakota's employers can not afford this same fate, with unemployment among the nation's lowest.

Again, marijuana is still illegal under federal law. Businesses regulated by the US Department of Transportation or subject to the federal Drug-Free Workplace Act still must maintain a drug-free workplace for marijuana and other drug use. Recreational marijuana will make compliance with federal law that much harder.

While GNDC recommends a DO NOT PASS recommendation, before HB 1420 is brought to the full House for consideration, we recommend HB 1420 be amended to strengthen employer rights and protections as attached.

Thank you for the opportunity to provide comment on HB 1420.

Public Act 101-0027 was enacted in Illinois in June 2019, legalizing recreational marijuana and contains some of the strongest recreational marijuana employer protections in the country and contains the following provisions:

- *Nothing in this Act shall prohibit an employer from adopting reasonable zero tolerance or drug-free workplace policies, or employment policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call provided that the policy is applied in a nondiscriminatory manner.*
- *Nothing in this Act shall require an employer to permit an employee to be under the influence of or use cannabis in the employer's workplace or while performing the employee's job duties or while on call.*
- *Nothing in this Act shall limit or prevent an employer from disciplining an employee or terminating employment of an employee for violating an employer's employment policies or workplace drug policy.*
- *An employer may consider an employee to be impaired or under the influence of cannabis if the employer has a good faith belief that an employee manifests specific, articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior or negligence or carelessness in operating equipment or machinery; disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; disruption of a production or manufacturing process; or carelessness that results in any injury to the employee or others. If an employer elects to discipline an employee on the basis that the employee is under the influence or impaired by cannabis, the employer must afford the employee a reasonable opportunity to contest the basis of the determination.*
- *Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for: (1) actions, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing under the employer's workplace drug policy, including an employee's refusal to be tested or to cooperate in testing procedures or disciplining termination of employment, based on the employer's good faith belief that an employee used or possessed cannabis in the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's employment policies; (2) actions, including discipline or termination of employment, based on the employer's good faith belief that an employee was impaired as a result of the use of cannabis, or under the influence of cannabis, while at the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's workplace drug policy; or (3) injury, loss or liability to a third party if the employer neither knew nor had reason to know that the employee was impaired.*
- *Nothing in this Act shall be construed to interfere with any federal, state or local restrictions on employment including, but not limited to, the United States Department of Transportation regulation 49 CFR 40.151(e) or impact an employer's ability to comply with federal or state law or cause it to lose a federal or state contract or funding.*